



Proposed NPDES Permit Fee Incentive for Clean Water Act Section 106 Grants; Allotment Formula

The Proposed NPDES Permit Fee Incentive for Clean Water Act Section 106 Grants; Allotment Formula would provide financial incentives to States to utilize an adequate fee program when implementing an authorized NPDES permit program. The proposed rule defines eligibility for the incentive, identifies the process for determining the amount each eligible State will receive, and establishes procedures and guidelines—including reporting requirements—for eligible States to follow when applying for the incentive. The rule would prompt more States to implement adequate NPDES fee programs and shift part of the financial burden to those who benefit from NPDES permits. The rule would not be effective prior to fiscal year 2008.

Background

EPA's current allotment formula for Section 106 grants establishes an allotment ratio for each State based on six components selected to reflect the extent of the water pollution problem in the respective States. These six components are: surface water area; ground water use; water quality impairment; potential point sources; nonpoint sources; and the population of urbanized areas (40 C.F.R. §35.162 (b)(1)(i)). By including a component related to point sources, EPA recognizes the important role they play in determining the extent of pollution in a State.

The CWA generally requires that all discharges of pollutants from a point source into waters of the United States obtain a permit under the NPDES program. A NPDES permit establishes pollutant discharge limits based on treatment technology performance, the quality of the water into which pollutants are discharged, and the potential impact of the discharge on public health and the environment. EPA oversees the NPDES program and also approves applications from States to administer and enforce the NPDES program in that State. Currently, 45 States are authorized by EPA to administer all or some parts of the NPDES program.

State water quality programs are funded with a mixture of State and federal dollars. Grants awarded under CWA Section 106 are States' primary source of federal funding. The growing complexity of water quality issues and the growing resource needs associated with addressing these issues have prompted more States to implement NPDES permit fee programs. An estimated 41 States currently have permit fee programs in place, with such fees paying for all or a portion of the cost of the State's permit program.

A number of States still operate their permit programs with little or no reliance on permit fees. EPA believes that these States can address permit program budget shortfalls through the implementation of permit fee programs that collect funds to cover the cost of issuing and administering permits. Funding permit programs with the support of permit fees allows States to

use CWA Section 106 funds for other critical water quality programmatic activities. EPA believes this rulemaking has been designed to provide an incentive to States to move toward greater sustainability in the way they manage and budget for environmental programs and to shift part of the financial burden to those who benefit from NPDES permits.

About This Rulemaking

This proposed rule will amend the State allotment formula to incorporate financial incentives for States to utilize an adequate fee program when implementing an authorized NPDES permit program. Funding permit programs with the support of permit fees will allow States to target CWA Section 106 funds for other critical water quality program activities. The rule would not be effective prior to fiscal year 2008.

As proposed, each year after EPA receives its final appropriation for these grants, EPA will allot the funds in the following order:

- 2.6 percent will be set-aside for allotment to the Interstates in accordance with the existing Interstate allotment formula in 40 C.F.R. 35.162(c)
- Funds may be allotted under 40 C.F.R. 162 (d)
- EPA may allot funds to States in accordance with this proposed permit fee incentive allotment formula, with the balance allotted to the States in accordance with the existing allotment formula under 40 C.F.R. 35.162(b)

Only those States that have been authorized by EPA to implement the NPDES program by the first day of the fiscal year (October 1) will be eligible for the set-aside funds appropriated by Congress. These States must then submit annually, by October 1, a certification to EPA that meets two additional requirements. First, the certification must include the total percentage of NPDES program costs recovered by the State through permit fee collections during the most recently completed State fiscal year, and a statement that the amount of permit fees collected is used by the State to defray NPDES program costs. This proposal defines NPDES program costs as all activities relating to permitting, enforcement, and compliance. Second, the certification must include a statement that State recurrent expenditures for water quality programs have not decreased from the previous State fiscal year, or indicate that a decrease in such expenditures is attributable to a non-selective reduction of the programs of all executive branch agencies of the State government.

After EPA determines the number of eligible States, each State will be eligible to receive up to a full share of the set-aside amount (capped at 50 percent of the State's Section 106 grant allotment in the previous year). EPA will determine the amount of a full share by dividing the set-aside amount by the number of eligible States. A full share will be the same amount for each eligible State. The percent of a full share that each eligible State will receive, however, will be determined by the following formula, based on the certification information described above.

- (A) A State will receive 25 percent of a full share if that State has collected permit fees that equal or exceed 75 percent of total State NPDES program costs; or

- (B) A State will receive 50 percent of a full share if that State has collected permit fees that equal or exceed 90 percent of total NPDES program costs; or
- (C) A State will receive a full share if that State has collected permit fees that equal 100 percent of total NPDES program costs.

Ultimately, in its certification, a State must inform EPA of its total NPDES program costs in the previous fiscal year and the percentage of those costs recovered through permit fees. EPA will use the information from this certification to determine any additional amount a State would receive in its Section 106 grant based on this financial incentive allotment formula.

How to Get Additional Information

For a copy of this proposed rulemaking, please contact Lena Ferris in the Office of Wastewater Management at (202) 564-8831 or ferris.lena@epa.gov. Copies of this proposed rulemaking may also be obtained by visiting EPA's Office of Wastewater Management Web site at:

www.epa.gov/owm/cwfinance/pollutioncontrol.htm . To find the e-Docket, please follow the instructions listed under the "Addresses" section of the Federal Register Notice.

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